

111TH CONGRESS
1ST SESSION

H. R. 296

To amend title 10, United States Code, to revise the process by which a member of the Armed Forces is retired for disability and becomes eligible for retirement pay, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 8, 2009

Mr. BUYER (for himself, Mr. BOOZMAN, Mr. ROONEY, Mr. STEARNS, and Ms. GINNY BROWN-WAITE of Florida) introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to revise the process by which a member of the Armed Forces is retired for disability and becomes eligible for retirement pay, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Armed Forces Dis-
5 ability Retirement Enhancement Act”.

1 **SEC. 2. REVISED PROCESS FOR DISABILITY RETIREMENT**
2 **FOR MEMBERS OF THE ARMED FORCES.**

3 (a) IN GENERAL.—Chapter 61 of title 10, United
4 States Code, is amended—

5 (1) by inserting before section 1201 the fol-
6 lowing:

7 “SUBCHAPTER I—FORMER PROCESS FOR RE-
8 TIREMENT OR SEPARATION OF MEMBERS
9 FOR DISABILITY

10 **“§ 1200. Applicability of subchapter: members retired**
11 **or separated before effective date of**
12 **Armed Forces Disability Retirement En-**
13 **hancement Act; certain members on tem-**
14 **porary disability retired list as of effec-**
15 **tive date**

16 “(a) IN GENERAL.—Except as provided in subsection
17 (b), this subchapter applies to the retirement or separation
18 for disability of members as follows:

19 “(1) Members who are eligible for retirement
20 for disability or separation for disability before the
21 end of the one-year period beginning on the date of
22 the enactment of the Armed Forces Disability Re-
23 tirement Enhancement Act.

24 “(2) Members on the temporary disability re-
25 tired list as of the end of such period who—

1 “(A) are eligible for retirement under the
 2 provisions of subchapter II in accordance with
 3 section 1206c of this title; but

4 “(B) do not elect to retire under the provi-
 5 sions of subchapter II as otherwise provided in
 6 section 1206c of this title.

7 “(b) INAPPLICABILITY TO CERTAIN MEMBERS.—For
 8 provisions relating to the applicability of subchapter II to
 9 the retirement for disability of certain members otherwise
 10 covered by this subchapter under subsection (a)(1), see
 11 section 1206b of this title.”;

12 (2) by transferring section 1206a to appear
 13 after section 1207a and redesignating such section,
 14 as so transferred, as section 1207b; and

15 (3) by inserting after section 1206 the fol-
 16 lowing:

17 “SUBCHAPTER II—REVISED PROCESS FOR
 18 RETIREMENT OF MEMBERS FOR DISABILITY
 19 **“§ 1206a. Applicability of subchapter: members re-**
 20 **tired on or after effective date of Armed**
 21 **Forces Disability Retirement Enhance-**
 22 **ment Act**

23 “(a) IN GENERAL.—This subchapter applies to the
 24 retirement of members for disability (including the place-
 25 ment of members on the temporary disability retired list

1 in accordance with section 1206e of this title) on or after
 2 the end of the one-year period beginning on the date of
 3 the enactment of the Armed Forces Disability Retirement
 4 Enhancement Act.

5 “(b) EXCLUSIVE APPLICATION.—Members eligible
 6 for retirement under this subchapter by reason of this sec-
 7 tion are not eligible for retirement or separation under
 8 subchapter I.

9 **“§ 1206b. Applicability of subchapter: certain mem-**
 10 **bers retired on or after October 7, 2001,**
 11 **but before effective date of Armed Forces**
 12 **Disability Retirement Enhancement Act**

13 “(a) ELECTION OF APPLICABILITY.—(1) During
 14 such period as the Secretary of Defense shall prescribe
 15 for purposes of this section, a former member described
 16 in subsection (b) may elect to retire under this subchapter
 17 in lieu of retirement or separation under subchapter I.

18 “(2) Each election under this subsection shall be exe-
 19 cuted in such form and manner as the Secretary of De-
 20 fense shall prescribe for purposes of this section.

21 “(3) Any election made under this subsection is irrev-
 22 ocable.

23 “(b) COVERED FORMER MEMBERS.—A former mem-
 24 ber described in this subsection is any former member
 25 who, during the period beginning on October 7, 2001, and

1 ending on the day before the end of the one-year period
2 beginning on the date of the enactment of the Armed
3 Forces Disability Retirement Enhancement Act, is retired
4 under the provisions of this chapter as in effect before the
5 end of such period.

6 “(c) TREATMENT OF FORMER MEMBERS MAKING
7 ELECTIONS.—(1) Effective as of the date of the correction
8 of the military records of such former member under sub-
9 section (d), each former member who makes an election
10 under subsection (a) shall be deemed to have been retired
11 under this subchapter, with retirement pay computed
12 under section 1401 of this title (as amended by the Armed
13 Forces Disability Retirement Enhancement Act), rather
14 than to have been retired under the provisions of sub-
15 chapter I.

16 “(2) No benefits are available to a former member
17 under this subchapter for any period before the correction
18 of the military records of the former member under sub-
19 section (d).

20 “(3) The Secretary of Defense may not recoup or col-
21 lect from any former member who is retired under this
22 subchapter pursuant to an election under subsection (a)
23 any amount of retirement pay paid to the former member
24 under this chapter before the date of the effective date

1 of the correction of the military records of the former
2 member under subsection (d).

3 “(d) CORRECTION OF MILITARY RECORDS.—The
4 Secretary concerned shall correct the military records of
5 each former member making an election under subsection
6 (a) to reflect that the former member is retired under the
7 provisions of this subchapter rather than retired under the
8 provisions of this chapter as in effect before the end of
9 the one-year period beginning on the date of the enact-
10 ment of the Armed Forces Disability Retirement Enhance-
11 ment Act.

12 **“§ 1206c. Applicability of subchapter: members on**
13 **temporary disability retired list as of ef-**
14 **fective date of Armed Forces Disability**
15 **Retirement Enhancement Act**

16 “(a) ELECTION OF APPLICABILITY.—(1) A member
17 described in subsection (b) may elect to retire under this
18 subchapter in lieu of retirement under the provisions of
19 subchapter I.

20 “(2) Each election under this subsection shall be exe-
21 cuted in such form and manner as the Secretary of De-
22 fense shall prescribe for purposes of this section.

23 “(3) Any election made under this subsection is irrev-
24 ocable.

1 “(b) COVERED MEMBERS.—A member described in
2 this subsection is any member—

3 “(1) whose name is on the temporary disability
4 retired list as of the end of the one-year period be-
5 ginning on the date of the enactment of the Armed
6 Forces Disability Retirement Enhancement Act; and

7 “(2)(A) whose disability qualifying the member
8 for placement on the temporary disability retired list
9 is determined after such period by the Secretary
10 concerned, based on accepted medical principles, to
11 be of a permanent nature and stable; or

12 “(B) whose disability is considered after such
13 period by the Secretary concerned to be of a perma-
14 nent nature and stable after five years of the place-
15 ment of the member’s name on the temporary dis-
16 ability retired list in accordance with section 1210(b)
17 of this title.

18 “(c) TIMING OF ELECTION.—A member eligible to
19 make an election under subsection (a) by reason of a de-
20 termination under subparagraph (A) or (B) of subsection
21 (b)(2) shall make such election, if at all, during such pe-
22 riod after the date of the determination as the Secretary
23 of Defense shall prescribe for purposes of this section.

24 “(d) TREATMENT OF MEMBERS MAKING ELEC-
25 TIONS.—(1) Effective as of the date of such election, each

1 member who makes an election under subsection (a) shall
2 be retired under this subchapter, with retirement pay com-
3 puted under section 1401 of this title (as amended by the
4 Armed Forces Disability Retirement Enhancement Act).

5 “(2) No benefits are available to a member under this
6 subchapter for any period before the election of the mem-
7 ber under subsection (a).

8 “(3) The Secretary of Defense may not recoup or col-
9 lect from any member who is retired under this subchapter
10 pursuant to an election under subsection (a) any amount
11 of retirement pay paid to the member under this chapter
12 before the date of the election of the member under sub-
13 section (a).

14 **“§ 1206d. Retirement**

15 “(a) IN GENERAL.—Upon a determination by the
16 Secretary concerned that a member covered by this sub-
17 chapter under section 1206a of this title is unfit to per-
18 form the duties of the member’s office, grade, rank, or
19 rating because of disability, the Secretary may, consistent
20 with regulations prescribed by the Secretary of Defense
21 for purposes of this subchapter, retire the member, with
22 retirement pay computed under section 1401 of this title
23 (as amended by the Armed Forces Disability Retirement
24 Enhancement Act) if the Secretary concerned also makes

1 the determinations specified in subsection (b) with respect
2 to the member.

3 “(b) DETERMINATIONS.—The determinations speci-
4 fied in this subsection with respect to a member are deter-
5 minations by the Secretary concerned as follows:

6 “(1) That the disability of the member, based
7 upon accepted medical principles—

8 “(A) is of a permanent nature; or

9 “(B) is of uncertain permanency, such that
10 a temporary disability retirement under section
11 1206e of this title is appropriate.

12 “(2) That the injury, illness, or disease ren-
13 dering the member unfit was incurred or aggravated
14 in the line of duty—

15 “(A) while the member was entitled to
16 basic pay under section 204 of title 37 or com-
17 pensation under section 206 of that title;

18 “(B) while performing active duty but not
19 entitled to basic pay under section 204 of title
20 37 or inactive-duty training; or

21 “(C) while engaged in an activity covered
22 by section 1201(c)(3), 1204(2)(B), or
23 1204(2)(C) of this title.

24 “(3) That the injury, illness, or disease was
25 not—

1 “(A) the result of the member’s intentional
2 misconduct or willful neglect; or

3 “(B) incurred during a period of unauthor-
4 ized absence.

5 **“§ 1206e. Temporary disability retired list**

6 “(a) IN GENERAL.—Subject to the provisions of this
7 section, a member covered by section 1206d(b) of this title
8 who is described by paragraph (1)(B) of such section shall
9 have such member’s name placed on the temporary dis-
10 ability retired list, with retirement pay computed under
11 section 1401 of this title (as amended by the Armed
12 Forces Disability Retirement Enhancement Act).

13 “(b) ADMINISTRATION.—(1) Subsection (a) shall be
14 administered in accordance with such regulations as the
15 Secretary of Defense shall prescribe for purposes of this
16 section.

17 “(2)(A) Except as provided in subparagraph (B), the
18 regulations prescribed under this subsection shall provide
19 for the applicability of the provisions of sections 1210 and
20 1211 of this title to a member whose name is placed on
21 the temporary disability retired list under this section.

22 “(B) The provisions of subsections (c), (d), and (e)
23 of section 1210 of this title shall not apply to a member
24 whose name is placed on the temporary disability retired
25 list under this section.

1 “(3)(A) The regulations shall provide for appropriate
2 mechanisms, applicable uniformly across the military de-
3 partments, for an annual review by the military depart-
4 ments of determinations to place members’ names on the
5 temporary disability retired list under this section in order
6 to ensure the accuracy and consistency of such determina-
7 tions by the military departments.

8 “(B) The Secretary of Defense shall submit to the
9 Committees on Armed Services of the Senate and the
10 House of Representatives each year a report on the results
11 of the reviews conducted by the military departments
12 under subparagraph (A) during the preceding year.

13 “(c) RETIREMENT.—If, as a result of a periodic ex-
14 amination under section 1210(a) of this title or upon a
15 final determination under section 1210(b) of this title, it
16 is determined that a member’s disability is of a permanent
17 nature, the member’s name shall be removed from the
18 temporary disability retired list, and the member shall be
19 retired under section 1206d of this title.

20 **“§ 1206f. Treatment of retirement pay**

21 “(a) IN GENERAL.—Retirement pay authorized by
22 this subchapter shall be treated as retirement pay for all
23 purposes under this title, including for purposes of eligi-
24 bility for medical and dental care under chapter 55 of this
25 title.

1 “(b) NO OFFSET UNDER DUPLICATION OF BENE-
2 FITS.—Retirement pay authorized by this subchapter is
3 not subject to the prohibitions against duplication of bene-
4 fits under sections 5304 and 5305 of title 38.

5 “(c) INELIGIBILITY FOR COMBAT-RELATED SPECIAL
6 COMPENSATION.—A member retired under this sub-
7 chapter is not eligible for combat-related special com-
8 pensation under section 1413a of this title.

9 “(d) INELIGIBILITY FOR CERTAIN SPACE-AVAILABLE
10 TRAVEL.—A member retired under this subchapter resid-
11 ing in a Commonwealth or possession of the United States
12 is not eligible for space-available travel on Department of
13 Defense aircraft under section 2461b of this title.

14 **“§ 1206g. Determinations of unfitness**

15 “(a) IN GENERAL.—In this subchapter, a finding of
16 unfitness for duty with respect to a member shall be based
17 on determinations by the Secretary concerned that—

18 “(1) the member is unfit to perform the duties
19 of the member’s office, grade, rank, or rating be-
20 cause of a disability; and

21 “(2) it is unlikely that through retraining in an-
22 other occupational specialty or other preparations
23 the member can be reassigned to other duties the
24 member would be fit to perform and which are con-
25 sistent with the needs of the armed force concerned.

1 “(b) INTERSERVICE TRANSFER.—With the consent
 2 of a member determined unfit for duty under subsection
 3 (a), the member may, instead of being retired under this
 4 subchapter, be transferred under section 716 of this title
 5 to another uniformed service if the Secretary responsible
 6 for that uniformed service determines that the member,
 7 currently or through retraining in another occupational
 8 specialty or other preparations, can be reassigned to other
 9 duties the member would be fit to perform and which are
 10 consistent with the needs of that uniformed service.

11 “(c) CONTINUATION OF SERVICE OF MEMBER DE-
 12 TERMINED UNFIT.—Upon the agreement of a member de-
 13 termined unfit for duty under subsection (a) and the Sec-
 14 retary concerned, the member’s service may be continued
 15 under terms and conditions specified by the Secretary con-
 16 cerned, including through transfer to another uniformed
 17 service under section 716 of this title.

18 “SUBCHAPTER III—ADMINISTRATIVE
 19 MATTERS”.

20 (b) DEFINITION OF DISABILITY.—

21 (1) DEFINITION.—Chapter 61 of such title is
 22 further amended by inserting after section 1219, the
 23 following new section:

1 **“§ 1220. Definition of disability**

2 “In this chapter, the term ‘disability’ includes phys-
3 ical disabilities and disabilities based on mental dis-
4 orders.”.

5 (2) CONFORMING AMENDMENTS.—Such chapter
6 is further amended—

7 (A) in section 1201(a), by striking “phys-
8 ical disability” and inserting “disability”;

9 (B) in section 1203(a), by striking “phys-
10 ical disability” and inserting “disability”;

11 (C) in section 1204, by striking “physical
12 disability” and inserting “disability”;

13 (D) in section 1206, by striking “physical
14 disability” and inserting “disability”;

15 (E) in section 1207, by striking “physical
16 disability” and inserting “disability”;

17 (F) in section 1210, by striking “physical
18 disability” each place it appears and inserting
19 “disability”;

20 (G) in subparagraphs (C) and (D) of sec-
21 tion 1212(a)(2), by striking “physical dis-
22 ability” and inserting “disability”;

23 (H) in section 1214, by striking “physical
24 disability” and inserting “disability”;

25 (I) in section 1215, by striking “physical
26 disability” and inserting “disability”;

1 (J) in section 1217(a), by striking “phys-
 2 ical disabilities” and inserting “disabilities”;
 3 and

4 (K) in section 1218(a), by striking “phys-
 5 ical disability” and inserting “disability”.

6 (c) CLERICAL AMENDMENTS.—Chapter 61 of such
 7 title is further amended—
 8 (1) by striking the table of sections;
 9 (2) by inserting after the chapter heading the
 10 following:

“Subchapter	Sec.
“I. Former Process for Retirement or Separation of Members for Dis-	
ability	1200
“II. Revised Process for Retirement of Members for Disability	1206a
“III. Administrative Matters	1207”;

11 (3) by inserting after the subchapter heading
 12 for subchapter I, as added by subsection (a)(1) of
 13 this section, the following:

“Sec.
 “1200. Applicability of subchapter: members retired or separated before effective
 date of Armed Forces Disability Retirement Enhancement Act;
 certain members on temporary disability retired list as of effec-
 tive date.
 “1201. Regulars and members on active duty for more than 30 days: retirement.
 “1202. Regulars and members on active duty for more than 30 days: temporary
 disability retired list.
 “1203. Regulars and members on active duty for more than 30 days: separation.
 “1204. Members on active duty for 30 days or less or on inactive-duty training:
 retirement.
 “1205. Members on active duty for 30 days or less or on inactive-duty training:
 temporary disability retired list.
 “1206. Members on active duty for 30 days or less or on inactive-duty training:
 separation.”;

1 (4) by inserting after the subchapter heading
 2 for subchapter II, as added by subsection (a)(3) of
 3 this section, the following:

“Sec.

“1206a. Applicability of subchapter: members retired on or after effective date of Armed Forces Disability Retirement Enhancement Act.

“1206b. Applicability of subchapter: certain members retired on or after October 7, 2001, but before effective date of Armed Forces Disability Retirement Enhancement Act.

“1206c. Applicability of subchapter: members on temporary disability retired list as of effective date of Armed Forces Disability Retirement Enhancement Act.

“1206d. Retirement.

“1206e. Temporary disability retired list.

“1206f. Treatment of retirement pay.

“1206g. Determinations of unfitness.”;

4 and

5 (5) by inserting after the subchapter heading
 6 for subchapter III, as added by subsection (a)(3) of
 7 this section, the following:

“Sec.

“1207. Disability from intentional misconduct or willful neglect: separation.

“1207a. Members with over eight years of active service: eligibility for disability retirement for pre-existing conditions.

“1207b. Reserve component members unable to perform duties when ordered to active duty: disability system processing.

“1208. Computation of service.

“1209. Transfer to inactive status list instead of separation.

“1210. Members on temporary disability retired list: periodic physical examination; final determination of status.

“1211. Members on temporary disability retired list: return to active duty; promotion.

“1212. Disability severance pay.

“1213. Effect of separation on benefits and claims.

“1214. Right to full and fair hearing.

“1215. Members other than Regulars: applicability of laws.

“1216. Secretaries: powers, functions, and duties.

“1217. Academy cadets and midshipmen: applicability of chapter.

“1218. Discharge or release from active duty: claims for compensation, pension, or hospitalization.

“1219. Statement of origin of disease or injury: limitations.

“1220. Definition of disability.

“1221. Effective date of retirement or placement of name on temporary disability retired list.”.

1 (d) ELIGIBILITY FOR DISABILITY RETIREMENT FOR
 2 PRE-EXISTING CONDITION AFTER EIGHT YEARS OF
 3 SERVICE.—Section 1207a(a) of title 10, United States
 4 Code, is amended by striking “or 1203” and inserting
 5 “1203, 1206b, 1206c, 1206d, or 1206e”.

6 (e) COMPUTATION OF RETIREMENT PAY.—The table
 7 in section 1401(a) of title 10, United States Code, is
 8 amended by inserting after the matter relating to Formula
 9 2 the following matter:

“3	1206b	Retired pay base	2½% of years of service
	1206c	as computed	credited to the person
	1206d	under section	under section 1208.1”.
	1206e	1406(b) or	
		1407.	

10 (f) CONFORMING AMENDMENTS RELATING TO RE-
 11 TIREMENT PAY.—

12 (1) RECOMPUTATION OF RETIREMENT PAY TO
 13 REFLECT LATER ACTIVE DUTY.—Sections 1402(b)
 14 and 1402a(b) of title 10, United States Code, are
 15 each amended by striking “chapter 61 of this title”
 16 and inserting “subchapter I of chapter 61 of this
 17 title”.

18 (2) RETIREMENT PAY BASE FOR MEMBERS RE-
 19 TIRED BEFORE SEPTEMBER 8, 1980.—The items in
 20 the column in the table in section 1406(b)(1) of such
 21 title designated “For a member entitled to retire-

1 ment pay under section:” are amended to read as
2 follows:

“1201
1202
1204
1205
1206b
1206c
1206d
1206e”.

3 (3) RETIREMENT PAY BASE FOR MEMBERS RE-
4 TIRED AFTER SEPTEMBER 7, 1980.—Section 1407 of
5 such title is amended—

6 (A) in subsection (c)—

7 (i) in paragraph (1), by striking
8 “other than section 1204 or 1205 or sec-
9 tion 12731 of this title” and inserting
10 “(other than section 1204, 1205, or 12731
11 of this title, or section 1206b, 1206c,
12 1206d, or 1206e of this title for nonreg-
13 ular service)”;

14 (ii) in paragraph (2), by inserting “,
15 or under section 1206b, 1206c, 1206d, or
16 1206e of this title for regular service,”
17 after “section 1201 or 1202 of this title”;
18 and

19 (iii) in paragraph (3)—

20 (I) by striking “section 1201 or
21 1202” and inserting “section 1201,

1 1202, 1206b, 1206c, 1206d, or
2 1206e”; and

3 (II) by inserting “or under sec-
4 tion 1206b, 1206c, 1206d, or 1206e
5 of this title for nonregular service”
6 before the period; and

7 (B) in subsection (d)—

8 (i) in paragraph (2), by inserting “, or
9 under section 1206b, 1206c, 1206d, or
10 1206e of this title for nonregular service,”
11 after “section 1204 or 1205 of this title”;
12 and

13 (ii) in paragraph (3), inserting “, or
14 under section 1206, 1206c, 1206d, or
15 1206e of this title for nonregular service,”
16 after “section 1204 or 1205 of this title”.

17 (4) GRADE ON RETIREMENT FOR DISABILITY.—

18 Section 1372 of such title is amended—

19 (A) by striking “section 1201 or 1204”
20 and inserting “section 1201, 1204, 1206b,
21 1206c, or 1206d”; and

22 (B) by striking “section 1202 or 1205”
23 and inserting “section 1202, 1205, or 1206”.

1 **SEC. 3. CONTINUATION OF RESPITE CARE AND AID AND**
2 **OTHER EXTENDED CARE BENEFITS FOR**
3 **MEMBERS OF THE UNIFORMED SERVICES**
4 **WHO INCUR A SERIOUS INJURY OR ILLNESS**
5 **ON ACTIVE DUTY.**

6 Section 1074(c)(4) of title 10, United States Code,
7 is amended—

8 (1) by redesignating subparagraph (B) as sub-
9 paragraph (C); and

10 (2) by inserting after subparagraph (A) the fol-
11 lowing new subparagraph (B):

12 “(B) Coverage for a member under this paragraph
13 may continue for such period after the discharge or sepa-
14 ration of the member from active duty as the Secretary
15 considers appropriate.”.

16 **SEC. 4. EXPANDED AVAILABILITY AND USE OF DEPART-**
17 **MENT OF LABOR TRANSITION ASSISTANCE**
18 **PROGRAM FOR SEPARATING MEMBERS OF**
19 **THE ARMED FORCES.**

20 (a) PARTICIPATION OF MEMBERS.—Section 1144 of
21 title 10, United States Code, is amended—

22 (1) in subsection (a)(1), by striking the second
23 sentence and inserting the following new sentences:

24 “When services under the program are provided as
25 part of preseparation counseling under section
26 1142(a) of this title, the services shall be provided

1 to the member within the time periods provided
2 under paragraph (3) of such section. Paragraph (4)
3 of such section shall apply with respect to deter-
4 mining the eligibility of members and their spouses
5 for services under the program.”; and

6 (2) in subsection (c), by striking “encourage
7 and otherwise promote maximum participation by
8 members of the armed forces eligible for assistance
9 under” and inserting “require members of the
10 armed forces described in subsection (a)(1) to par-
11 ticipate in”.

12 (b) CROSS REFERENCE IN PRESEPARATION COUN-
13 SELING PROVISION.—Section 1142(a) of such title is
14 amended by striking paragraph (2) and inserting the fol-
15 lowing new paragraph:

16 “(2) In carrying out this section, the Secretary con-
17 cerned shall—

18 “(A) utilize the services available under the
19 transition assistance program required by section
20 1144 of this title; and

21 “(B) require members under the jurisdiction of
22 the Secretary who are undergoing preseparation
23 counseling to participate in the program.”.

○